

**COMMISSION MEETING
THURSDAY, SEPTEMBER 9, 2004
DRAFT MINUTES**

Chair Niemi called the meeting to order at 1:30 p.m., at the Hampton Inn located in Bellingham. She welcomed the attendees and introduced the members and staff present:

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair;**
 COMMISSIONER CURTIS LUDWIG, Kennewick;
 COMMISSIONER GEORGE ORR, Spokane;
 SENATOR MARGARITA PRENTICE, Seattle;

STAFF PRESENT: **RICK DAY, Director;**
 NEAL NUNAMAKER, Deputy Director;
 AMY BLUME HUNTER, Administrator-Legal;
 DAVE TRUJILLO, Acting Administrator-Licensing;
 CALLY CASS-HEALY, Assistant Director-Field Operations;
 JERRY ACKERMAN, Assistant Attorney General;
 SHIRLEY CORBETT, Executive Assistant

Chair Niemi announced the Commission might have problems achieving a quorum for the October 14-15 meeting, in which case a special meeting/telephone conference call will be scheduled. She urged the licensees to check the agency website for further details.

Staff Accomplishments:

Director Day and **Chair Niemi** introduced Mark Harris, Special Agent Supervisor-Everett, and presented him with a service pin and certificate recognizing 10 years of service with the Commission. **Director Day** then reported that Special Agent Ben Kelly recently graduated from the Basic Law Enforcement Academy; he graduated at the top of his class academically, and in overall performance. **Director Day** introduced two partnership program participants, Special Agent Steve Steiner and Special Agent Ron Baldwin. The partnership program is an opportunity for employees of the Commission to visit and observe all facets of the Commission.

1. Review of Agenda and Director's Report:

Director Day identified various items inserted into the agenda packet after publication. He briefly reviewed Thursday's agenda, noting that staff was requesting that the house-banked card room consideration for Bluz at the Bend be removed from the agenda. The card room

was not ready to move forward at this Commission Meeting. Relative to Friday's agenda, Item 18 has been withdrawn at the petitioner's request. **Director Day** proceeded with the Director's report and drew attention to the monthly "E-Link" message for staff—this edition provides an update on the budget implementation process of putting the Commission's approved budget into the agency's formal planning and implementing the organizational and procedure changes needed.

Problem Gambling Update:

Director Day addressed the latest draft of the proposed statement of work between the Division of Alcohol and Substance Abuse (DASA) and the Gambling Commission, dealing with course training and awareness services. Director Day noted the concept is to sign an agreement similar to the draft, with the intent to offer the most flexibility possible for DASA. Director Day advised that the Commission has been made aware that the Governor's Office is also developing another concept that would most likely be introduced in the next legislative session. He reported that DASA was beginning to take some responsibility in that area and the Council on Problem Gambling was still participating. He affirmed that the agreement was designed to ensure that the Commission's funds could be applied in areas ranging from expanded 24-hour help line assistance (if that is needed), to specific training and awareness services on site, and to allow that flexibility depending upon where other money may come forward. The Commission hopes to move forward with this agreement or one very similar to it, and have a final copy signed and in the Commission's next agenda packet.

Chair Niemi questioned if DASA has reviewed the proposal and whether the amount of money proposed was adequate to provide for all presentations, pamphlet printing, and the other services identified. **Director Day** responded that the draft has been shared with DASA. He explained that the conceptual approach was to configure the agreement so DASA could prioritize the service and the work with the available funding. The overall concept was to provide a permanent interagency agreement with permanent funding, through the rule the Commission is considering for training and awareness services directed through the Department of Social and Health Services Division of Alcohol and Substance Abuse. Director Day mentioned that if the interagency agreement was successful, there was a potential it could serve as a model for the Lottery and Horse Racing Commission if they also make the decision to enter into similar agreements.

Fingerprint System Review:

Director Day reported that the agency has made significant improvement in its automation process relative to fingerprint cards and background checks, and he introduced Terry Westhoff, Acting Program Manager from the Licensing Investigations Unit. **Mr. Westhoff** explained the Licensing Investigations Unit consists of the Financial Investigations Unit and the Criminal Intelligence Unit. The Criminal Intelligence Unit (CIU) is responsible for conducting criminal history background checks on all license applicants and substantial interest holders. This consists of running individuals through state and national criminal history databases and also running fingerprint cards through the State Patrol and the FBI. Mr. Westhoff reported the Commission conducted approximately 4,177 fingerprint card checks in the last fiscal year—close to the annual average of 4,000 over the past few years.

Prior to July of this year, the fingerprint scanning system process was completely manual. **Mr. Westhoff** explained that as a part of the license application process, two fingerprint cards are obtained from each individual. The fingerprint cards are processed through CIU, and sent to the State Patrol. The State Patrol runs one of the cards through their database and sends the second card to the FBI. When the checks are completed, the cards are mailed back to the Commission with paper printouts indicating any criminal history.

Mr. Westhoff addressed the disadvantages of the previous process. He noted that because of the volume of fingerprint cards the FBI receives, it took from two to four months to get responses back from the FBI. Because of the time lag, staff conducted risk assessments for licensure on individuals by running their name and date of birth date through the state and national criminal data base checks. While they provide reliable criminal history information, if the individual committed a crime utilizing a name other than what was provided on the application, that information may not show up on the original checks. That type of information could not be obtained until the fingerprint card information is received, because fingerprint cards positively identifies the applicant/individual, no matter what name they utilize. Another disadvantage in the manual system was that there wasn't any way of telling if bad fingerprint cards were received. Only after the responses were received back from the State Patrol or the FBI would staff be able to determine if the cards were rejected. If the cards were rejected, new fingerprint cards would have to be obtained from the individual and they would have to be resubmitted through the process again, which slowed the process even more. **Mr. Westhoff** affirmed the previous process was very paper intensive.

The new system, "Touch Print Card Scan System" was developed and marketed by the Identix Company. **Mr. Westhoff** described it as a regular computer system, with a monitor, keyboard, central processing unit, and a high quality scanner. What sets it apart is the Touch Print software inside the computer, which reads the fingerprint card. The initial cost for the system was \$13,500 which included the hardware and software, installation and training to familiarize staff with the system. The agency also purchased an annual maintenance contract for \$1,109. The new system allows commission staff to take the fingerprint cards and insert them into the scanner—the Touch Print software reads the fingerprint card and brings up an image. It then sends that image to the State Patrol, and the State Patrol can electronically send that image to the FBI. At the time the system initially reads the fingerprint card, is able to immediately notify staff of potential reject problems with the fingerprint card. In the end, the system receives the electronic messages back from the State Patrol and FBI, notifying the Commission of any criminal history on the individual.

The new system is much faster. Typically the information is received back from the FBI within two days. That provides staff greater assurance that individuals who do not qualify are not allowed to work in gambling activities for any period of time. The new system also reduces mailing and supply costs because everything is now electronic. The instant notification of rejected cards also saves time and money—each time fingerprints cards are sent to the State Patrol, it costs \$54 whether the cards are accepted or rejected. Lastly it provides positive identification. **Mr. Westhoff** reiterated that the fingerprint cards are the

only way to positively identify an individual. He stated the system has been a great asset; it is easy to use and has been very dependable.

Chair Niemi responded that it was very impressive, and she inquired if other state agencies use this system. **Mr. Westhoff** affirmed the State Patrol, and he noted that some tribal licensing entities were also starting to use the system. **Deputy Director Nunamaker** advised the Commission is the only state agency that has this system now. He noted that entities such as schools want to use a live scan system, which didn't work for the Commission. **Commissioner Orr** inquired if the system became cost efficient, would license fees stabilize or reduce. Mr. Nunamaker responded that although the processing time was reduced, the State Patrol has not reduced their \$54 per submittal billing process. **Director Day** acknowledged that Deputy Director Nunamaker was largely responsible for keeping this item alive and continuing to work with the State Patrol to make sure this happened along with the Commission's automation crew operating behind the scenes.

2005-2007 Biennium Budget Submittal:

Director Day reported that the Commission submitted the budget to OFM as required with the request to have the Commission's approved budget for the 2005- 07 biennium included in the Governor's executive budget. A cover memo submitted with the budget made several key points:

- The 2005-07 budget includes a 21 FTE reduction from the original fiscal year 2005 level through the end of fiscal year 07, which is in response to continued transfers of over 50 percent of the gambling revolving working capital balance.
- The budget was designed to further streamline the agency to balance expenses and revenues while continuing mission critical services, as well as incorporating new efforts in problem gambling, internal audits, the rules simplification process, and automation.
- Total gambling net receipts continue to grow and the Commission is clearly aware that the various interests that realize income from gambling are aggressively competing for an increased share in gambling revenue. This comes at a time when the Commission has fewer assets for regulation and enforcement.
- Legislative changes, industry practices, and Initiative 892 have the potential to significantly alter the Commission's workload or responsibility. It may require that the Commission revisit their budget.
- Concerns about the level of working capital given the potential for significant increases for employee salary and benefits.

Director Day advised that he anticipated further meetings about the budget, with the Office of Financial Management. He also acknowledged the excellent job the Business Operations budget staff did in preparing and submitting the budget documents.

Internal Control Review and Risk Assessment Report:

Director Day reported the Commission is required to do an annual certification at the Office of Financial Management, and this was one of the first areas of responsibility completed by the Internal Auditor. The primary purpose of the review is to provide an assessment of the internal controls of the agency and the related risk. The Internal Auditor identified no material control weaknesses and concluded that the agency has a strong control environment.

Office of Financial Management – Potential Impacts of Initiative 892 Report:

Director Day reported the Office of Financial Management prepared a summary document of the statewide impacts of I-892. It was included for the Commission's reference in determining whether the Commission desires agency staff to produce a regulatory impact of I-892. For example, currently a pull-tab license is an annual license, it has no direct value, and it is only good for one year. The status of the pull-tab license would change under the initiative—the pull-tab license or house-banked license will actually be the mechanism whereby licensees would become eligible for machines supplied by the Lottery. As a result, this would mean that the license would be required in order to access thousands of dollars in revenue, relative to machine gambling. That may very well change the amount of administrative changes and actions that take place relative to the Commission's licenses and could actually expand the number of locations while at the same time reducing revenue.

Chair Niemi affirmed that if I-892 passes, the Commission would need to know if more FTE's were required because there would be more people, more casinos, and more involvement on the Commission's part; and to anticipate increases or the revenue impact on the Gambling Commission. **Director Day** affirmed the impact statement from the Office of Financial Management looked at the statewide financial impacts, not directly at the regulatory impacts.

Commissioner Niemi asked her fellow commissioners if the Commission should let OFM and the Governor's Office know that there would be a regulatory impact on our agency—clearly there would be a problem with the tight budget. **Commissioner Orr** concurred that it was a critical obligation to know the impacts. **Commissioner Ludwig** responded that the Commission would be required to facilitate a regulatory impact statement if I-892 passed. **Director Day** affirmed, noting that if the Commission wanted staff to proceed, the Commission could approach it from the viewpoint of new legislation and complete the analysis from that perspective. He believed the information gained from the process would be beneficial in assisting the agency to have a list of factual impacts.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** directing staff to investigate and report on the financial and regulatory ramifications of this initiative from the Commission's perspective. *Vote taken; the motion passed unanimously.*

Quarterly Adjusted Cash Flow Report:

Director Day pointed out the inserted report was the first glimpse of the report under the new reporting process. Last year, the report was based on a quarterly process. Now, the adjusted cash flow requirements are based on a calendar year. The report is designed to help staff use projected required amounts to provide a clue as to whether or not there is a potential for licensees to be in jeopardy of meeting their quarterly cash flow requirement. Using the previous quarterly process, there were about five licensees that would be in jeopardy or were not meeting the requirements at the time. Under the new rule, only one licensee is currently in jeopardy of not meeting the requirements. The 25 percent adjustment would resolve issues for that licensee as well, because under the new rule, that adjustment is automatic and no petition is required. It appears that the new process is working at this point.

Monthly Update Reports:

Director Day drew attention to the Administrative Case Update, and specifically addressed two violations for two licensees that are being held responsible for allegations of failing to report illegal activities in their premise to which they were a witness. He emphasized, to serve as a reminder for licensees that the responsibility of a licensee goes beyond not violating the rules or laws themselves; that it also includes a provision, which is designed to assist the Commission at identifying illegal activity. Director Day affirmed the Commission intends to pursue these kinds of violations as they come forward. The Congressional Update provided a brief summary of amendments to the Indian Gaming Regulatory Act. There were significant amendments regarding the regulation of Class III Gambling that would allow the National Indian Gaming Commission to regulate Class III Gambling activities, as well as amendments to clarify revenue sharing. At this point, the amendments will not move forward; however, the Commission may want to weigh in later if this issue gains life.

2. Charitable and Nonprofit Gambling Report:

Director Day introduced **Consultant Sally Perkins**, principal owner of Practical Solutions, a business and management-consulting firm. Ms. Perkins reported she was hired last spring for a significant research project on Charitable and Nonprofit Gambling, and she was present to review the high points of that report.

Ms. Perkins thanked the following agency staff: Amy Hunter, Kathy Mills, Loren Husted, Cameron Baker, Susan Arland, Arlene Dennistoun, Terry Westhoff, Tina Griffin, Dave Trujillo, and Neal Nunamaker for their expertise and knowledgeable contributions.

As an overview, **Ms. Perkins** noted the major authorized charitable and nonprofit gambling activities in Washington are Bingo, punchboards/pull-tabs, and raffles. This report focuses on those three activities—they are the largest in terms of gross receipts and net income. The state also authorizes fundraising events, social card rooms, and amusement games. These activities are no longer significant in the terms of the dollars they generate for charitable purposes, but they are still operated by some charitable nonprofit groups.

The legislative history regarding the authorization of gambling in Washington was studied from the territorial days forward. The Legislative declarations were studied in depth (see Appendix A & B). A regulatory history and timeline for each of the major authorized activities was developed, with a particular focus on net return adjusted cash flow. A great deal of data was analyzed regarding the trends of the charitable nonprofit gambling in the state of Washington and Ms. Perkins noted regulators in several other states were contacted—those that either have similar charitable nonprofit activities, or who have experienced issues that would be of particular interest to Washington.

The sources of data reviewed included RCW's, legislative documents regarding legislative sessions and committee work, and newspaper accounts. The Washington Administrative Code was a great source of information, as well as the Commission's annual reports. Prior to 1987, the annual reports included narratives explaining what the issues were and how the Commission was approaching them. Ms. Perkins suggested putting some narratives back in

the report to help people understand the Commission's overall approach and strategy to some of the very difficult issues the Commission deals with. A great amount of information was extracted from the Commission's database, and a number of qualification reviews and financial reports we reviewed. Ms. Perkins reported that regulators in Oregon, Michigan, Minnesota, Texas, Ohio, and California were contacted. She noted that California's charitable and nonprofit gambling was regulated locally, so no statewide trends were available or relevant for this project.

Ms. Perkins reported the overall data trends revealed that the number of licensees has declined 26 percent since calendar year 1987. Total gross receipts have declined 36 percent since calendar year 1994, which was the highest year for gross receipts. Net income (gross receipts, less prizes, less expenses), has declined by 46 percent since calendar year 1992, which was the high point for net income. In calendar year 2003, charitable/nonprofit gross receipts reflected 23 percent of the total gambling that the Commission regulated. In 1987, they were 47 percent, meaning a reduction of about half from 1987 to 2003. Part of that was because of the growth in commercial gambling, but also because of the decline in the charitable/nonprofit sector. The trends vary by activity. In Bingo, gross receipts were down 44 percent since 1994, which was the best year for bingo. Net income was down 66 percent since 1991. Clearly bingo has shown a significant decline.

Punchboard and pull-tab gross receipts were down 25 percent since 1993, which was the highest year, and net income was down 29 percent since 1992. The best years for both of these activities were in the early 1990's. Raffles were up significantly—gross receipts were up 184 percent, and net income was up 146 percent since 1987. Ms. Perkins noted that in terms of how the three major activities relate, as of calendar year 2003, Bingo generated \$6.7 million in net income in total and pull-tabs generated \$8 million. Punchboard and pull-tabs now exceed Bingo. Raffles generated \$3.2 million—almost half as much income now as Bingo.

To look further at how these trends actually affected licensees, **Ms. Perkins** looked at two things—who got hardest hit (whose gross receipts or net income declined the most), and who was still doing well. In the bingo area it was the large, but not the very largest licensees—the licensees between \$500,000 to \$3.5 million in gross receipts, and those that are in the educational, social, charitable, and civic stated purposes. Religious or at least organizations that identify their stated purpose as religious, no longer participate in Bingo. Ms. Perkins noted that one of the major arguments for legalizing gambling in the 60's and 70's was to make church Bingo legal. **Senator Prentice** advised that she remembered being rather shocked that minors were allowed in the Bingo halls, and the argument then, was that because they had started connected with the churches, that was okay. She suggested that if that argument was gone, maybe it was time for the Legislature to do something about having children in that environment. Ms. Perkins reported that in Minnesota, charitable/nonprofit gambling is a billion dollar industry, and the Catholic parishes are very active in participating in Bingo.

Returning to the trends, **Ms. Perkins** reported the hardest hit punchboards and pull-tabs licensees were the small and medium sized operations, probably because volume mattered in

terms of the agricultural, fraternal, and stated purposes. In raffles, the only decline seen were in the very largest licensees, perhaps because there were a lot more raffles going on, which may have cut into their business. In terms of those licensees that are doing well or those groups of licensees that are doing well, Ms. Perkins affirmed that size still matters. These are licensees who have sustained or are increasing their gross receipts in net income. In Bingo, the licensees that are the most successful under those criteria are the smallest entities, and those that are in the athletic stated purpose. She noted there were several very large licensees that have an athletic stated purpose who are very successful in Bingo—and while the smallest as a group do better, there were some significant very large licensees who do better in the athletic area. The most successful punchboard and pull-tabs operators were the extra-large, the very largest licensees. Ms. Perkins suggested that volume probably made a difference in terms of the number of people available to purchase the product. The civic, education, and athletic stated purposes have the greatest strength. For raffles, the smallest licensees tend to do the best under the \$25,000 gross receipts—those for charitable and educational stated purposes.

Overall, **Ms. Perkins** reported the conclusion she drew from analyzing the data suggested that the whole charitable nonprofit sector has been declining. Only raffles showed consistent growth. Many of the very large Bingo operations were struggling, and a number of them are compensating by increasing their punchboard and pull-tab market. She suggested that what might be happening is that the Bingo hall brings in the volume of people, but by itself cannot generate the kind of income that is desired. When one already has a volume of people and then adds punchboards and pull-tabs, they make the whole operation profitable. Therefore, it is the volume from Bingo and the profit from pull-tabs together that makes the licensees successful. She noted that small licensees are doing quite well in Bingo and raffles—which supports the original concept that was authorized by the people in 1972 and the Legislature in 1973—to have small organizations working with their members and friends of their members, run by volunteers, done on a small scale. That model still works, and it has worked consistently. The largest licensees are doing well in punchboard and pull-tabs, probably because of volume.

Ms. Perkins advised that she looked particularly at how the Commission approached its overall regulation of the charitable/nonprofit sector, and identified six major factors the Commission addressed over the 30 years that the Commission has been regulating this area. One is the nature of the charitable organization and member. The Commission has been very involved in setting record keeping and recording requirements. The Commission regulated size, both in terms of gross receipts and in terms of prize payouts. The Commission regulated operating constraints in conjunction with legislative action. The Commission has spent a lot of time defining income and how to calculate it, and on focusing on what the requirements should be around the dollars flowing to the charitable purpose.

Ms. Perkins believed the significant strengths of the regulatory effort related directly to the Commission's focus on strict control. She reported that regulators in other states were very envious of regulators in Washington because our legislation was so clear about strict control, which she thought was something our Legislature could be proud of. She also noted the work the Commission has done with financial reporting and record keeping has been

excellent. There are two approaches: to set general standards and hope that everybody figures out a way to run their systems to get the Commission the information the Commission wants, or, by just telling people exactly how to do it. Ms. Perkins affirmed it was much more effective to tell people, even though they get cranky about that because they sometimes think they are being over regulated. Ms. Perkins noted the Commission has avoided many reporting and financial record keeping problems by being very specific about what is expected of licensees.

Ms. Perkins affirmed the Commission has spent a lot of time making sure those charitable/nonprofit organizations and their members are legitimate. As a result of that focus, the Commission has avoided the problems that many other states have had with people who have set up charitable/nonprofit organizations as a front for something else. The Commission has been very clear in dealing with issues relating to the legitimacy of organizations, and when there have been problems the Commission has gone back to the Legislature and asked them to strengthen the legislative mandate on that. Ms. Perkins also believed that Washington has been ahead of other states in reference to approving enhancements to gambling activities and games for charitable/nonprofits. Washington has actually been in the forefront of looking at new developments and changes for games and activities, and the people in the states previously mentioned look to our state for leadership.

One of the very major issues the Commission has dealt with many times since 1983 has been the issue of net income; net return and adjusted cash flow. It has been a dominant issue for probably 20 of the 30 years of the Commission's existence. There have always been requirements, and often times licensees have either been out of compliance, or worried about being out of compliance. The licensees have then approached the Commission and asked for regulatory relief. The Commission has tried to be responsive, because one of the goals is for charitable/nonprofit organizations that wish to operate gambling activities to be able to generate money for a charitable purpose. Primarily the people who have been affected the most by this issue have been the large and extra large licensees. **Ms. Perkins** reported that there have been nine rule changes in this area since 1983. There have been numerous study groups and task forces—and the reports have been helpful. She noted that whether the Commission intended it or not, the effect of the rule changes has been to reduce by 58 percent the amount required to be applied to the charitable purpose for the largest licensees. Over time, as the Commission has dealt with this issue, the net income as a percentage of gross receipts have dropped from about ten percent to about five percent. Ms. Perkins questioned whether that was the Commission's intent, and whether it was time to look at this again.

Ms. Perkins identified four issues that she believed were important for the Commission to consider. One was to take a look at the overall regulatory philosophy and principles for regulating the charitable/nonprofit sector in the future. Another was to look at the issue of what amount goes to the charitable purpose, and to take a look at the organizational purpose other than gambling, which is what the law requires. Lastly, to look at what the successful charitable/nonprofit gambling business model of the future might look like.

Referring back to the regulatory philosophy, **Ms. Perkins** questioned what the overall set of guiding principals or mission statement would the Commission use for making regulatory decisions in the future. She noted the Commission's philosophy has varied in the past. It has shifted depending on the membership of the Commission and the current working environment. It has ranged from strict control—to being the facilitator of profitable operations. Given what was happening with charitable/nonprofit sectors in general, Ms. Perkins thought it would be valuable for staff and the commissioners to articulate the regulatory philosophy for the next few years to make it very clear.

Ms. Perkins addressed the amount of money that actually goes to the charitable purpose, and explained how a dollar walks through the system. A dollar comes in the door in a players hand—of that dollar, 72 cents goes to prize payouts, 23 cents goes for expenses, including the supplies for the games, leaving 5 cents for net income. The Commission only requires that 60 percent of that (5 cents) to go for the charitable purpose, which gets the total down to 3 cents, and of that, the Commission allows 35 percent to go to administrative purposes. Only 65 percent has to go to a direct service, which is less than 2 cents. Ms. Perkins asked whether the requirements have been lowered too far—and from the Commission's perspective, what should be the acceptable minimum percentage. She noted that some states (Oregon, Tennessee and Indiana) are starting to look at increasing their requirements for the amount of dollars that go to the charitable purpose. They are beginning to shift their attitude from helping everybody stay in compliance, more toward if a licensee can't stay in compliance, maybe it's time that they get out of this business and look at other ways to generate charitable funds. Ms. Perkins thought the challenge for the Commission would be to create a balance between reasonable compliance so that nonprofit groups that want charitable/nonprofit gambling to generate money for their purpose may do so, but that a reasonable amount is required to go to that purpose. She affirmed that was why articulating that balance in the regulatory philosophy was so important.

Commissioner Orr questioned whether the comparison states had comparable environments in terms of house-banked card rooms and tribal casinos. **Ms. Perkins** responded that almost every state had a different array, and almost every state computed things a little bit differently. Some states focused on expenses, some states focused on compensation, and Washington chooses to focus on the bottom line, which is also different. **Commissioner Ludwig** verified that regardless of what the nature of the competition, charitable/nonprofit Bingo was in essence declining in all states. Ms. Perkins affirmed, noting the competition varies widely from state to state.

Ms. Perkins also suggested that the Commission look at the whole issue of how much of the organization total budget and total effort was devoted to gambling. Legislation requires that organizations that do charitable and nonprofit gambling have a primary purpose that is other than gambling. Ms. Perkins advised that she reviewed 22 sets of financial reports that licensees turned in as part of their qualification review process. She pointed out that the qualification review process does not look at that specific issue. She discovered that over half of the sets of financials (from large operations) showed that more than 60 percent of the gambling and non-gambling expenses were on the gambling side of the ledger. Some were up in the 70 and 80 percent range. Over 40 percent of those financial reports showed more

than 60 percent of total revenue came from gambling of all the revenue sources available. The questions raised were: when does gambling become the primary purpose—and how much of the total budget (either revenue or expense), can be utilized in the gambling operation before gambling becomes the primary purpose—and what is the appropriate size of the gambling piece relative to the total organization. Ohio has recently dealt with this issue and they have determined that no more than 50 percent of an organization's income should come from gambling; otherwise its primary purpose is gambling.

Ms. Perkins addressed the business model issues. She believed the challenges for the charitable/nonprofit sector in this state is that there are many factors beyond the Commission's power to regulate or control. Everything from the decline of the membership in fraternal organizations, the aging of certain groups of people who like to play certain games, to smoking bans, and even things like Initiative 892. All of these things are beyond the Commission's ability to directly influence. Therefore, if the business model is not working very well and the Commission cannot control the factors that are impacting that business model, then it is important to take a look at whether the business model still works. Ms. Perkins suggested that when the Commission has nine rule changes to address a problem that keeps recurring, and when a decline in the sector is obvious, and when it is determined that the small organizations are still doing pretty well, but the big organizations are struggling, then it is reasonable to ask that question. She reported that in July, Bill Virgin of the Seattle PI wrote an article about gambling as a commodity and as a business. Basically, when a business becomes a commodity business, it is very hard to make a lot of money because everyone is doing it, and consumers have many places to go to purchase that product. The only time someone gets a gain is when they offer something new and unique—and every time something new and unique happens, they get a gain until everyone else offers the same thing. He pointed out that little by little, everybody starts doing this same thing, so whatever short-range competitive edge someone gets, they can also lose it very quickly. Given that gambling may be becoming a commodity in this state, a person who wants to do gambling has many choices of where they could go. Both the commercial and Tribal operators may have more capital available to invest in amenities that would attract a gambler. The unique niche that the charitable/nonprofit gambling licensees occupies is their charitable/nonprofit purpose—and the fact that when players go there to play Bingo, or buy a pull-tab or raffle ticket, they are making something good happen in their community for a child, or a senior citizen, or an athletic team. Ms. Perkins suggested that in the future, it would be important for charitable/nonprofit licensees to look closely at how to take full advantage of their charitable/nonprofit niche in terms of attracting new players.

Ms. Perkins indicated that in the broader nonprofit world, fundraising should be no more than 35 cents for every dollar raised. Charitable/nonprofit Bingo and pull-tabs is \$3 to \$4 dollars for every dollar raised. That is just expenses—that is not prize payouts. Raffles on the other hand are around 40 cents. One of the questions that a typical nonprofit donor asks is how much of their dollar benefits the charitable purpose—and the maximum amount, with prize payouts, at best, is 5 to 10 cents and could be as low as 2 cents. Ms. Perkins indicated that donors are going to ask that kind of question and donors are going to expect accurate cost allocations. She noted the Commission has chosen not to get into the Pandora's Box of telling people how to do cost allocation. Ms. Perkins suggested that another standard in the

broader nonprofit world that the Commission might consider are CPA audits for organizations with gross revenues of over \$250,000. In fact, she believed \$250,000 was high, and she noted a lot of funders require an audit if they achieve \$100,000 in gross revenues. A CPA audit would be one more tool for being sure that that cash was being handled properly and that the internal controls were in place.

Another standard in the general nonprofit field is the standard of diversified funding sources. It is called the one-third rule—it means that typically a nonprofit to be financially sustainable and healthy should have three major income sources. They should each comprise about one third of their income, for example, a third of their income in government grants, a third of their income in program participant fees, and maybe a third from gambling; or a third from private fund raising, a third from government grants, and a third from gambling. She reported that many of the very large licensees in Washington are highly dependent on their gambling income, with 60, 70, and 80 percent of their total revenue coming from their gambling income. **Ms. Perkins** suggested that if that was the case and their business model was not working very well, they were very vulnerable, which was a concern. Donors or new players will also want to know how these organizations do business. She offered the example about the Lake Washington Soccer Club, and some of the questions being raised about them.

Lastly, **Ms. Perkins** reported that there were some other charitable nonprofit requirements that the Commission might piggyback on to get a regulatory benefit. She urged the Commission to have licensees report what their IRS stated purpose is—right now a licensee can choose from all the stated purposes, and there were licensees who were in five purposes, which makes analyzing the information by stated purpose hard. Ms. Perkins reported the Secretary of State requires that charities be registered but exempts gambling licensees from registration as charities. She offered her personal opinion that it probably would make sense to not exempt them, or coordinate with the Secretary of State and get a stronger regulatory piece. She noted her overall goal of raising all of these items was to talk about the broader charitable nonprofit sector and to also to be sure that all charitable/nonprofit organizations operate in an effective and highly respected manner, so that they keep and earn the public trust, and so that people continue to support them with their dollars, whether their dollars come through Bingo, pull-tabs or raffles, or in other ways.

Ms. Perkins affirmed the Commission has a great deal on its plate, and many challenges, including some budget reductions. She thought the Commission should consider where the information from this report fits on the priority list, and how soon the Commission could address any of the issues regarding the charitable/nonprofits. She urged the Commission to consider the relationship of charitable nonprofit gambling to overall charitable/nonprofit issues in general. She suggested that the things that are happening in the broader nonprofit world would eventually spill over into the Commission's world—and that keeping abreast of changes in the charitable/nonprofit world in order to anticipate some of the other pressures that might be placed on the licensees would be helpful. Ms. Perkins recommended that someone on staff should spend a little time keeping abreast of those issues. Lastly, she urged the Commission to have further conversations about the business model issue. What the changes are—what's likely to evolve, and how the Commission and the Licensees can work

together so that licensees still have a reasonable opportunity to generate funds through offering gambling activities, but that in doing so they recognize the financial realities, and not make themselves vulnerable to a significant loss of funds if that business model continues not to function well.

Commissioner Ludwig complemented Ms. Perkins on the very thorough, informative, and valuable report—not only for the Commission and staff, but also to all the members and charitable/nonprofit Bingo operators. He believed the presentation pointed out how efficient this agency is compared to the rest of the country, and he appreciated that very much. **Ms. Perkins** responded that the Commission and their staff have done a fantastic job.

Commissioner Orr echoed Commissioner Ludwig's comments, noting that he also appreciated Ms. Perkins' candor and thoroughness. **Chair Niemi** thanked Ms. Perkins, advising that as the newest member of the Commission, she was at first a little shocked about the charitable/nonprofits, surprised about Bingo, but not very surprised, and that she was and still is very concerned about the very small percentage that goes to the nonprofits. Chair Niemi advised the Commission would be doing a regulatory review and taking a good look at the charitable/nonprofit sector, and considering some of the suggestions and recommendations offered. She noted that gambling in the state of Washington is now about 30 years old and it's changed. Chair Niemi assured the licensees that this wasn't a threat; however, the Commission would not just put this study aside, but rather take a look at some of the things the Commission should be taking a look at and hopefully making some changes in the system to conform to what the world is now. **Senator Prentice** agreed the report has given the Commission a lot of really good food for thought, and it was an excellent and very factual report.

Chair Niemi called for a recess at 3:05 p.m., and recalled the public meeting at 3:30 p.m.

3. Qualification Report and Review:

American Veterans Post #1, Tacoma:

Deputy Director Neal Nunamaker reported the qualification review for the organization is for the fiscal period ending December 31, 2003. The American Veterans Post #1 of Tacoma was organized in July 1947, and has been licensed by the Commission since March 1974. American Veteran's primary purpose is veteran's affairs. The American Veteran's Post #1 currently holds a Class K Bingo license, raffle license, amusement license, a Class L pull-tab license, and a social card room license Class B. American Veterans Post #1 of Tacoma has made significant progress towards their stated purpose, and has qualified as a nonprofit conducting business. Staff recommends that American Veterans Post #1 of Tacoma be certified to conduct gambling activities in the state of Washington as a nonprofit organization. Mr. Nunamaker introduced the following representatives from the organization: Robert Bunguard-Commander, and Ronnie Strong-Bingo Manager.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** that American Veterans Post #1 be certified to conduct gambling activities in the state of Washington as a nonprofit organization. *Vote taken; the motion passed with three aye votes.*

4. House-Banked Card Room Reviews:

Old General Store Steakhouse & Saloon, Roy:

Dave Trujillo reported the Old General Store Steakhouse & Saloon, located in Roy, is owned by RIEHM Inc. They are seeking approval to be licensed as a house-banked facility authorized to operate up to five tables. They currently have a punchboard and pull-tab Class B license, and have been licensed by the Commission since 1995. RIEHM Incorporated is currently owned by Diana Riehm and Mark Riehm.

Special Agents from the Financial Investigation's Unit initiated and completed a financial investigation on RIEHM Incorporated and the owners to look for possible hidden ownership. The owners were identified and examined, and the background checks did not disclose any information that would preclude the applicant from receipt of their license. The sources of their funds were identified and the appropriate documents were reviewed for accuracy. Agents from the Field Operation's Division completed an on-site pre-operational review and evaluation (PORE), which consisted of an evaluation for compliance with Title 9.46 of the Revised Code of Washington and the Washington Administrative Code. Agents reviewed the nature, size, and scope of house-banked card games, the regulations for the operation and management of the games, the forms and record keeping system, and the surveillance and security. The licensee proposed to operate extended hours from 11 a.m. to 7 a.m. Based on the results of the licensing investigation and the PORE, the staff recommends RIEHM Incorporated, doing business as the Old General Store Steakhouse and Saloon be licensed as a house-banked card room authorized to operate up to five tables with the maximum betting limit as allowed under WAC 230.41.20. Mr. Trujillo introduced Diana Riehm.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** authorizing RIEHM, Inc., doing business as Old General Store Steakhouse & Saloon to be licensed as a house-banked card room authorized to operate up to five tables with the maximum betting limit allowed under WAC 230-40-120. *Vote taken; the motion passed with three aye votes.*

Mickey's Sports Bar & Grill, Port Angeles:

Mr. Trujillo reported that Mickey's Sports Bar & Grill located in Port Angeles is currently owned by Central Washington Gaming, Limited Liability Company (LLC). Mickey's Sports Bar & Grill is seeking approval to be licensed for house-banked card games of up to seven tables. They currently hold a punchboard and pull-tab Class B license and a public card room Class F-2 license—both are set to expire in December of 2004. Mickey's Sports Bar & Grill was previously known under the same trade name and was also licensed by the Commission to conduct punchboard and pull-tab gambling activities. The current owner, Central Washington Gaming, LLC, purchased Mickey's Sports Bar & Grill from the general partnership of the prior licensee. Mr. Trujillo introduced several members present at the meeting.

Special agents conducted two investigations, a licensing investigation as well as a (PORE). The investigation conducted by the Financial Investigations Unit consisted of looking for unreported ownership, unreported substantial interest holders, undisclosed ownership, and determining the sources of all their funds. The PORE consisted of an evaluation of the administrative and accounting controls and forms, records, surveillance, security, and organization of the gaming operation and game rules. Based on both the investigations, the

staff recommends Central Washington Gaming, LLC, doing business as Mickey's Sports Bar & Grill, be licensed as a house-banked card room authorized to conduct up to seven tables with the maximum betting limit allowed under WAC 230-40-120. Manager George Kain and his wife Jody were present to respond to questions.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** authorizing Central Washington Gaming, LLC, doing business as Mickey's Sports Bar & Grill to be licensed as a house-banked card room authorized to operate up to seven tables with the maximum betting limit allowed under WAC 230-40-120. *Vote taken; the motion passed with three aye votes.*

Bluz at the Bend, Spokane:

Chair Niemi reaffirmed the item had been removed from the agenda as previously identified.

Mr. Trujillo reported the Commission now has a total of 90 active house-banked card rooms—86 operating and four that are licensed but not operating, and 16 house-banked card room applications pending review. He speculated that the increase in submittals was most likely in anticipation of the possible passage of Initiative 892. **Mr. Trujillo** reported that the current number of active licenses, in conjunction with the pending applications, have the potential to significantly impact the agency's workload. He noted that while staff estimated the overall house-banked card room facilities to reach a total of 85, the number of house-banked card room applications for the month of November is expected to be at or greater than the six received in August.

5. New Licenses, Changes, and Tribal Certifications:

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to approve the new licenses, changes, and Class III tribal certifications as listed on pages one through 25 on the approval list. *Vote taken; the motion passed with three aye votes.*

6. Default:

Sarah Farmer, Card Room Employee:

Amy Hunter, Administrator for the Communications and Legal Division, reported that staff is asking that Sarah Farmer's card room employees license be revoked, based on Ms. Farmer taking \$2,500 in cash from the cage at BC MacDonalds. Ms. Farmer admitted taking the money, and her actions were captured on surveillance tape. Charges were brought forward and they were sent by regular mail. They were returned to the Commission and then sent to Ms. Farmer at her mother's address. The charges were not returned, and therefore it is assumed they were received. By failing to respond, Ms. Farmer has waived her right to a hearing; therefore, staff asks that a default order be entered revoking Ms. Farmer's license.

Chair Niemi inquired whether Sarah Farmer was present and it was determined she was not. **Commissioner Orr** verified that taking \$2,500 was a crime and questioned whether the police were looking for this lady. **Ms. Hunter** affirmed it was a crime and she advised that staff has referred the case to the prosecutor's office. As of last Friday, charges had not been filed.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to accept the findings, conclusions, decision, and final order in default in the case of Sarah Farmer, and

ordered the revocation of her license to conduct gambling activities. *Vote taken; the motion passed with three aye votes.*

Nancilee Neal, Card Room Employee:

Ms. Hunter reported that staff is requesting that Ms. Neal's nonprofit gambling manager license be revoked based on Ms. Neal's failure to deposit over \$17,000 from pull-tab games into the Burien Eagles account where she worked. There were several other related pull-tab violations. Ms. Neal has resigned and sent her license to the Commission. Ms. Neal's license has expired, but it was valid when the charges were issued. Staff attempted to contact Ms. Neal and remind her that a response was due. Staff was not successful in their contact attempts, and by failing to respond Ms. Neal has waived her right to a hearing. Staff requests that a default order be entered to revoke Ms. Neal's nonprofit gambling manager license.

Commissioner Orr inquired whether this case had been referred to the prosecutor's office or the local police; he believed it was the Commission's responsibility as a regulatory agency to follow-up. **Chair Niemi** concurred and asked to at least have a letter sent to the prosecutor advising that the Commission has revoked the individual's license and to attach the entire findings and conclusions so they don't think the Commission has ignored the criminal aspects. **Ms. Hunter** affirmed. **Chair Niemi** questioned whether Nancilee Neal was present and it was determined that she was not.

Commissioner Ludwig inquired if any restitution has been made for the funds that Ms. Neal didn't deposit. **Ms. Hunter** advised that staff would check on that and whether or not Ms. Neal has been charged. **Director Day** affirmed that if there is a criminal violation, the staff routinely pursues the license, files a case with the prosecutor, requests criminal charges, and in most cases also pursues the licensee if they have failed to follow the appropriate internal controls. It's a three-pronged attack. He noted that prosecutors use their discretion as to whether they file the case or file criminal charges.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to accept the findings, conclusions, decision, and final order in default in the case of Nancilee Neal and ordered the revocation of her license to conduct gambling activities. *Vote taken; the motion passed with three aye votes.*

7. Other Business/General Discussion/Comments from the Public:

Chair Niemi called for public comments, there were none.

8. Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation/Adjournment:

At 4:05 p.m., **Chair Niemi** called for an Executive Session to discuss pending investigations, tribal negotiations and litigations. At 4:35 p.m., Chair Niemi recalled the public meeting and announced that Friday's meeting would commence at 9:30 a.m.

Minutes submitted by,
Shirley Corbett, Executive Assistant

**COMMISSION MEETING
FRIDAY, SEPTEMBER 10, 2004
DRAFT MINUTES**

Chair Niemi called the meeting to order at 9:30 a.m., at the Hampton Inn located in Bellingham. The following members and staff were present:

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair;**
 COMMISSIONER GEORGE ORR, Spokane;
 COMMISSIONER CURTIS LUDWIG, Kennewick;

STAFF PRESENT: **RICK DAY, Director;**
 NEAL NUNAMAKER, Deputy Director;
 AMY BLUME HUNTER, Administrator, Communications/Legal;
 DAVE TRUJILLO, Acting Administrator-Licensing Services;
 CALLY CASS-Healy, Assistant Director-Field Operations;
 JERRY ACKERMAN, Assistant Attorney General;
 SHIRLEY CORBETT, Executive Assistant

9. Approval of Minutes:

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to approve the regular meeting minutes of the August 12 and 13, 2004, meeting as presented. *Vote taken; the motion passed with three aye votes.*

10. Digital Surveillance in Card Rooms:
WAC 230-40-625 and WAC 230-40-825:

Ms. Hunter reported that the staff had asked that this rule be held over until September for final action. Item 10 (a) sets the requirements for surveillance in a Poker room, when the licensee has player-supported jackpots, or is collecting fees using the rake method. Item 10 (b) deals with surveillance in house-banked card rooms. The changes simply update the digital surveillance rules. She explained that digital surveillance has been allowed for approximately two years, and more licensees and Tribal casinos are now starting to use digital surveillance. At the July meeting, quad cameras and multi-plexers were discussed and staff added definitions to the rule. The staff also realized there were some things in the rules that were required even though it wasn't necessary, for instance, not requiring coverage on entrances and exits in Poker rooms. The licensee may choose to do that, but, it is not required, and those types of items were updated. Staff recommends final action, and that the

rule becomes effective 31-days after filing. **Chair Niemi** called for public comments and there were none.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to adopt WAC 230-40-625 and WAC 230-40-825 with an effective date 31-days after filing. *Vote taken; the motion passed with three aye votes.*

11. Merchandise Prizes for Pull-Tab Games – Removing Pricing and Credit Restrictions:
WAC 230-12-330 and WAC 230-12-340:

Ms. Hunter reported this rule dealt with the credit and pricing restrictions for merchandise games. She noted that most of the pull-tab games that are played in this state award cash as prizes (not merchandise), but about one percent award merchandise prizes. The rule has been on the agenda for several months, and last month Fred Gasperetti asked that it be held over another month. Several manufacturer distributors and/or representatives attended the agency's Rules Team meeting and staff listened to their comments; however, staff continues to support the rule changes. Letters were sent to all 36 distributors and the Commission received responses from three, which were included in the agenda packet. Ms. Hunter explained that pricing restrictions require the distributor to sell to operators under the same terms—merchandise prizes may be sold at different prices to different people. The credit issues deals with being able to sell something to someone on credit, which is not allowed; however, there are some limited circumstances where normal trade account terms may apply.

The underlying reasons for the rules relate to concerns about someone potentially having an undue influence over an operator, or, a manufacturer over a distributor, in addition to concerns regarding predatory practices. **Ms. Hunter** reported that only a few states (big pull-tab market states such as Minnesota) have restrictions. She explained that the staff doesn't feel these restrictions are needed for merchandise prizes because it is a small part of the market. She noted that staff will be looking at the regulatory practices and evaluating whether there are good solid reasons for the existing rules, and bringing forth proposals within the next few months that may well remove the credit and price restrictions for the cash prize pull-tab games as well. Ms. Hunter affirmed this rule package was up for final action.

Commissioner Ludwig questioned why the Commission even cared about these restrictions, what difference the rule would make, and why the Commission had these restrictions in the first place. **Ms. Hunter** responded that initially it was because of the concerns about undue influence. She noted the rule has been in existence since the beginning of the Gambling Commission. She affirmed that as with any rule change, if staff determined that it absolutely did not work, they would address the Commission and suggest the restrictions were needed again. Commissioner Ludwig questioned whether in the meantime some small distributors could be damaged quite severely from predatory practices. Ms. Hunter responded that she didn't anticipate as significant of an impact on merchandise as she did if the Commission were to reduce the restrictions on the cash pull-tab prizes. Commissioner Ludwig verified that all the correspondence received back responded in opposition to the proposed change. Ms. Hunter affirmed.

Chair Niemi addressed the fact that only a small group gives merchandise, and inquired if the staff had any dollar figures. **Ms. Hunter** reported that in 2003, there was \$336 million in cash prizes, and \$3.6 million in merchandise prizes. With no further comments **Chair Niemi** called for public comments.

Tony Panagiotu, attorney and CPA, representing Gasperetti's Distributing, voiced opposition to the two proposed rules. He noted the first rule removes the requirement that licensed distributors sell merchandise under the same price and terms. The second rule removes the credit restriction for such merchandise and prizes. He reported the current statutory scheme has worked very well for decades and, if anything, the distributors think the rules should be tightened for merchandise rather than diluted as the current proposals set forth. He believed the passage of the two proposed rule changes ran contrary to the public policy stated in RCW, which states that the public policy on gambling in this state is to keep the criminal element out of gambling, promote social welfare of the people by limiting the nature and scope of gambling activities, and by strict regulation and control.

Mr. Panagiotu advised that the proposed regulations begin an erosion of the public policy of strict regulation, explaining that when merchandise is purchased as a prize, it becomes an integral part of the gambling device—its cost is used in computing the payout percentage, which is strictly regulated by the state. That cost must be very specifically defined, because it determines the payout. Mr. Panagiotu explained that the merchandized device and the merchandise are linked at the hip and that by changing the “same price” rule for merchandise and encouraging discriminatory and perhaps predatory pricing, some of the small distributors could in fact be harmed. He affirmed the distributors wanted as many distributors as possible—they don't want to have the big distributors essentially forcing the smaller ones out of business. He suggested that if the Commission was concerned with predatory pricing, wouldn't the Commission want to have control over 100 percent of the transaction—even though merchandise prices only represents one percent of the payouts, wouldn't the public have the right to the same regulations as for money transactions. Mr. Panagiotu reported there are operators in this state that utilize merchandise prizes as the majority of their gaming operation, and questioned if they shouldn't be as regulated as the others. He suggested that the citizens should have those transactions just as regulated as the money transactions. He believed the state has a responsibility to ensure that all transactions have the appropriate scrutiny. Under current law both the distributor and the operator have the same invoices, and the Commission has cross checks available because the distributor and operator are covered under the record and recording requirements of the statute. By treating distributors as non-licensed vendors the audit crosscheck is removed. He emphasized the Commission needed to audit and verify with certainty and that by starting to erode the rules and making distributors non-licensed vendors, it would open up a Pandora's Box of transactions that could not be audited with the certainty. Mr. Panagiotu reported that approximately a year ago, Spokane Pull-Tabs (a distributor), petitioned the Commission to tighten the rule by asking that all vendors selling merchandise prizes be licensed, because that was an integral part of the gambling device. Mr. Panagiotu affirmed the distributors want a little bit more regulation, and they don't want the Commission to go farther than the current regulation.

Secondly, **Mr. Panagiotu** addressed the granting of credit for the sale of merchandise prizes and emphasized that gambling and credit do not mix. He noted that current regulations have restrictions in place to avoid the abuse of credit, which has worked well for decades. He believed the proposed rule opens the door to a host of unforeseeable circumstances. He noted the rule changes were not brought forward by operators or the general public. In fact, he suggested that most of the distributors who work with these types of rules on a daily basis oppose this regulation. When a cash purchase is made, that transaction is defined—and the Commission can audit that with certainty. If credit is allowed, the potential for purchasing under various terms comes into play and operators may take discounts for early payment on their account—which ultimately ends up violating the payout structure. He noted that the staff has indicated that this rule may be part of a larger rule reduction process, and he suggested putting everything together at once rather than dealing with just one small piece of the overall rules package. **Mr. Panagiotu** believed there were a number of areas in existing statute that don't make sense and if there was going to be a rule reduction process, he thought the Commission should look at all of them rather than looking at a small part because there could be unforeseeable circumstances. He recommended getting everyone together to build new rules that are more appropriate for these times. He asked the commissioners to vote against both rule proposals.

Chair Niemi inquired of the total \$3.6 million merchandise prize distribution, what percentage Gasperetti's supplied in 2003. **Mr. Panagiotu** responded that Gasperetti's had sales in the \$6 to \$7 million range—all in punchboard and pull-tabs. He believed about a third of the business involved the sale of merchandise prizes. He affirmed it was an integral part of the business, noting that Gasperetti's is the largest distributor of merchandise prizes in the state. Chair Niemi inquired about Mr. Ed's Distributing, and Mr. Panagiotu advised that he didn't have the figures. He noted there were probably a half of a dozen distributors in this state that sell the majority of merchandise.

Director Day clarified that the two rule proposals came forward out of a previous rule petition that was filed by Spokane Pull-Tab & Bingo Supply—this rules package came forward as an option. He noted the Commission did not concur that it was appropriate for the Commission to enter into the regulatory market of people that weren't supplying pull-tabs themselves—only miscellaneous merchandise. The proposal came forward to de-regulate both sides of the transaction and to allow equal footing. In addition, he noted that as the staff reviews the entire package of rules, staff would be looking for ways to track some of the regulatory activities to better support budget reductions. He agreed it may make sense to look at the entire rules package, and noted that while staff believed that moving forward with this particular rules package would not jeopardize the market, staff would not be dramatically concerned if it didn't move forward now and was considered as a part of a whole package.

Chair Niemi verified that as the Commission reviewed the rules simplification process, and if the Commission decided that it was reasonable to pass the proposed rules, it wouldn't be on the books until January 1, 2005, and if the Commission ultimately decided it was inappropriate, it could be revoked. Director Day affirmed.

Commissioner Ludwig verified that no one in the pull-tab merchandise industry has asked for the elimination of these restrictions. **Director Day** affirmed. Commissioner Ludwig

suggested that Mr. Panagiotu makes a compelling argument—and if the Commission does something today, the rule wouldn't be effective until January anyway. Commissioner Ludwig advised that he was in favor of waiting and discussing and dealing with the whole rules package. He agreed it was a Pandora's Box and that he was hard pressed to understand why it wouldn't be good public policy and not pass the proposed rules package

Commissioner Ludwig made a motion seconded by **Commissioner Orr** not to adopt the two proposed rules amending WAC 230-12-330 & WAC 230-12-340.

Commissioner Niemi commented that based on the volume of business provided by Gasperetti's and Mr. Ed's Distributing, she believed this was a classic case for deregulation, and therefore believed the Commission should move on this issue. *Vote taken; the motion passed with two aye votes, Commissioner Niemi voted nay.*

12. Licensure of Digital Surveillance Installers:

WAC 230-02-205:

Ms. Hunter reported this rule was up for adoption, it was filed after the July meeting. The rule deals with licensing the people who install digital surveillance. The staff feels that surveillance is an integral part of the card room security and control features. The proposal would require businesses that provide installation, integration, maintenance or any other service of digital surveillance systems that allows direct access to the operating system or files (those businesses as well as the representatives that work for those businesses that are performing those installation) to be licensed. She reported the Recreational Gaming Association has agreed to the new language regarding direct access. Ms. Hunter advised that the staff recommends final action and if the rule is adopted, that it be effective January 1, 2005, in order to give the businesses and those employees that need to be licensed, time to do so. With no further questions, **Commissioner Niemi** called for public comments.

Gary Murrey, on behalf of the Recreational Gaming Association, reiterated the proposed change does reflect the correspondence submitted by the RGA, and he thanked the Commission for looking at the RGA's concerns, understanding what they were, and moving forward to a joint resolution. He affirmed this rule goes farther in creating an electronic security system and moving to a better environment in the future.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to adopt WAC 230-02-205 with an effective date of January 1, 2005. *Vote taken; the motion passed with three aye votes.*

13. Betting Rounds in Card Games:

WAC 230-40-120:

Ms. Hunter advised this rule was also up for final action and deals with how a wager is determined. Under the proposal it would be based on when a player has to make a decision (before getting another card or before cards are revealed). The changes are being made in order to have the same interpretation in the house-banked card rooms, as exists in the Tribal casinos. Ms. Hunter advised it would also provide clarification for staff and licensees. The

staff recommends the rule be adopted and that it be effective 31 days after filing. **Chair Niemi** called for public comments and there were none.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to adopt WAC 230-40-120 with an effective date 31-days from filing. *Vote taken; the motion passed with three aye votes.*

14. Petition for Rule Change – Robert Dayton:

WAC 230-40-825:

Ms. Hunter reported this petition was submitted by Robert Dayton, it was filed at the last Commission meeting, and the rule was up for discussion only. She explained that under the current rule, when a winning hand has been won, if it is in excess of \$500, surveillance cameras must photograph the winning hand, the amount of the wager, and the player who won the prize. The petitioner is asking that the threshold amount be increased to \$1,000. He feels that when surveillance has to stop other surveillance duties and move the cameras—it takes away from the other important duties and also takes the floor supervisor away from other duties. He believed that with the change made in betting limits, more hands will need to be verified. Ms. Hunter noted the Recreational Gaming Association testified that they felt the amount should be changed to \$2,500 rather than the original \$500 limit, or the \$1,000 limit suggested by Mr. Dayton. She reported that staff recommends further discussion. **Chair Niemi** called for public comments.

Mr. Teeny, representing the RGA, addressed the discussion regarding the \$1,000 and the \$2,500 mark. He reported that the RGA talked to Mr. Dayton and that he planned to reword his petition to the \$2,500 limit. The reason relates to the amount of the jackpots or bonuses paid out; experience has shown operators have to stop their cameras and games about six times every hour based on the \$500 limit. By raising the limit to \$2,500 limit, operators would be able to keep their games going at a continuous basis. He affirmed that with the \$200 betting limits and potential payouts, it created stoppage on the games. He reported that on games such as Pai-Gow or Lucky Ladies, it stops the action on the game approximately every 10 minutes per game.

Commissioner Ludwig inquired if the Commission could amend a petition, or if the Commission was required to propose an alternative. **Mr. Ackerman**, Assistant Attorney General, responded that the Commission may not make substantial changes to a proposed petition. However, he suggested that simply changing the dollar amount probably would not be considered for APA purposes a substantial change, and affirmed the Commission could change the dollar amount to an amount that the Commission was comfortable with. **Chair Niemi** hoped that staff would give the \$2,500 limit a hard look because it may be more practical.

Commissioner Orr advised that while he didn't disagree, he was concerned that the proposal recommended a change from \$500 to \$1,000 and now, all of a sudden the door was being opened to a \$2,500 limit. **Chair Niemi** wasn't sure that going up to \$2,500 was all that much different from \$1,000; however, she hoped to hear from staff at the next meeting about the differences between \$500 and \$2,500 and \$1,000 and \$2,500 so the Commission

could make a longer-term decision without having to raise the limit another \$500 every six months. There were no further comments; continued discussion will be conducted at the next meeting.

15. Problem Gambling Public Awareness and Training Fee:

WAC 230-04-208:

Ms. Hunter reported this rule concept of a Problem Gambling Awareness Training Fee actually proposes a separate fee apart from license fees; however, it would be based on a percent of the license fee, which is usually based on gross receipts. Small operators would pay a smaller fee and larger operators would pay a larger fee (ranging from \$12 to \$1,200)—the staff felt that this would be more equitable rather than having a flat fee for everyone. It would apply to charitable and commercial operators. Overall, it would provide approximately \$230,000 per year. Staff recommends further discussion and that the rule be effective June 30th of 2005—it would be a funding source for the next fiscal year. **Chair Niemi** called for public comments.

Delores Chiechi, Executive Director- Recreational Gaming Association, representing the card room industry in the state, reiterated the RGA's opposition to the rule change/license fee. She reported the RGA has been involved with the Governor's task force on this issue and that they are hopeful they will come up with a comprehensive proposal. She noted the industry is concerned that they will end up being double taxed—by the Gambling Commission and then again by the Legislature if additional legislation is passed during the upcoming session. The RGA asked that the Commission consider language that would repeal the proposed rule should the Legislature take action—something to the effect that if the Legislature should resolve this issue by funding awareness and training, that the rule would not go into effect and no fees would be collected from licensees.

Ms. Chiechi reported that the Governor's task force has representatives from all segments of the gambling industry, including the lottery, horse racing, charitable nonprofits, commercial gaming, pull-tabs, and the card room industry. In addition, she noted that some of the Tribes were also negotiating some sort of support. Addressing the anticipated revenues of \$230,000 being put in a pool expecting it go for training education, she questioned what would prohibit the Legislature seeing the \$230,000 and transferring the funds for their budget needs. Ms. Chiechi wasn't sure the Commission had the ability to provide language that would protect those funds from such an occurrence; and therefore, the RGA asked the Commission to consider their comments.

Chair Niemi understood the RGA's concern about double taxing and she appreciated hearing that the industry was working together. Chair Niemi advised that she was very grateful for the change made in the title to clarify the program is for awareness and training. She affirmed that treatment is a whole different issue—and much more expensive. Chair Niemi inquired what would happen if the Commission passed the rule with an effective date of June 30th, which would theoretically be beyond the legislative session—would it work if they proposed a separate fee without addressing the Commission's rule. **Mr. Ackerman** responded that it would depend entirely on what they passed. If they passed a statute that by its language and intent clearly preempted what the Commission was doing, then the rule in

effect would be nullified. If they passed something that clearly didn't preempt the rule under consideration, or was ambiguous in its terms, then the rule would probably continue to survive—it would be very fact specific, depending on the language of what the Legislature did. Certainly if there is a task force working on this and they wanted to prevent a double taxation, a way to do that would be to have the language that came out of the Legislature in effect preempt this rule—there wouldn't be double taxation, the Commission would not be able to collect the fee. Chair Niemi believed that one of the advantages of the Commission passing the rule was because it would be very fair—charging according to the size of the organization, and she thought the Legislature might also agree.

Ms. Chiechi responded that she didn't believe it was a fair system because it doesn't spread the costs across all segments of the industry that offer gaming—it would only tax bingo, pull-tabs and commercial card rooms. It doesn't tax tribes or the lottery. **Chair Niemi** noted the Commission cannot tax the tribes, and cannot address the lottery issues.

Commissioner Ludwig asked if a sunset provision to the rule would make Ms. Chiechi and the RGA feel better, and whether that would give the Commission or force the Commission to review the rule at a certain time to see what the Legislature has done. **Mr. Ackerman** affirmed that attaching a sunset would cause the rule to go away at the specified time. He clarified that his understanding for the reason that the Commission staff was proposing this fee was to satisfy the obligation the Legislature placed on the Gambling Commission in RCW 9.46.071. What the Lottery chooses to do about it is their business, and clearly the Commission never intended to do anything other than fulfill the obligation as specified under RCW 9.46.071. Chair Niemi concurred and advised that she has always been leery of sunset clauses.

Don Kauffman, President of Washington Charitable City Gaming Association and also speaking for the Bingo Voice reported the organizations have some concerns regarding the negotiations with DSHS. He asked the Commission not to sign a binding agreement or contract with DSHS on this issue, until it was known whether or not the Legislature intended to handle this issue properly. He suggested that do so may force the double taxation. He asked the Commission to postpone action on WAC 230.04.208 until it is determined whether the Legislature will do its due diligence on this topic. However, he noted that should the Legislature fail to follow through and do its due diligence on problem gambling, WCCGA and the Bingo Voice would go on record in support of 230.04.208. **Chair Niemi** reiterated that as mandated by the Legislature, the Commission was obliged to do something this year. **Mr. Ackerman** affirmed that WAC 9.46.071 states that the Gambling Commission and the state have a responsibility to continue to provide resources for the support of services for problem and compulsive gamblers. It doesn't say how the Commission has to fulfill this obligation—it doesn't set a dollar amount, it doesn't say the Commission has to enter into contracts with DSHS, it imposes an obligation on the Commission to do something, and it leaves it to the commissioners to decide what to do. The staff proposed this fee as a way of providing funds for the Commission to fulfill that obligation.

Mr. Kauffman commented that his organization has posters in their hall that directs people to a 1-800 number for problem gambling. He believed that was a requirement of all Bingo

operators in the state; therefore, something was being done. He addressed the \$150,000 per year contract the Commission entered into in the past to provide problem gambling services and acknowledged the determination that the contracts didn't necessarily meet the intent of the legislation, at which time the contracts were discontinued. **Mr. Ackerman** clarified that the contract had to be rewritten to make sure that the money was being spent for permissible services—it had to do with what the Commission's authority was with regard to spending money, and it was a policy choice by the Commission to redirect the money and to redirect the amount of money it was providing to the Council on Problem Gambling.

Director Day clarified that the 2005 supplemental budget allocates \$150,000 for fiscal year 2005 for problem gambling training and awareness. That funding is targeted to execute the interagency agreement with DASA for training and awareness services. The proposed fee in the rule before the Commission is intended to fund the services under that interagency agreement for the future to satisfy the requirements in WAC 9.46.

Chair Niemi called for additional public comments, there were none, and she noted further discussion on this item would be heard at the next meeting.

16. Card Room Supervision: CEO Acting as Gaming Operations Department Manager: WAC 230-40-554:

Ms. Hunter reported that Gary Murrey submitted the petition on behalf of the Recreational Gaming Association. The current rule requires that two separate people fill the Chief Executive Officer and the Gaming Operations Department Manager. That has been a requirement since the inception of house-banked card rooms. The intent was to prevent people from having compatible functions. She reported that there was a lot of discussion with staff about the change, and staff reached the conclusion that if a card room has proper internal controls, they could have one person performing both functions. This would be a business decision by the owner. She advised that staff recommends further discussion.

Chair Niemi called for public comments, and there were none.

17. Verification of Winning Hands in Player-Supported Jackpots:

Cally Cass-Healy reported that at the August meeting, the Commission adopted an amendment to WAC 230-40-070 to require only house-banked card games to use logo cards. She noted that because staff had concerns regarding the protection of player funds, the proposed amendment under 5(c) of this rule requires dealers to verify under surveillance that the correct cards were in the deck when the PSJ prize was paid out. In addition, a housekeeping change is being proposed, basically clarifying the word "fan" means to display the value and suit of each card in the winning hand. Staff requests that this rule be filed for further discussion and become effective at the same time logo cards are no longer required for Poker games and PSJ's—January 1, 2005. **Chair Niemi** called for comments and there were none.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to file WAC 230-40-610 for further discussion. *Vote taken; the motion passed unanimously.*

18. Petition for Rule Change – Monty Harmon, Services Supplier:

WAC 230-02-205:

Ms. Cass-Healy reported the petitioner withdrew this petition.

19. Petition for Rule Change – Recreational Gaming Association, Service Supplier:

WAC 230-02-205:

Ms. Cass-Healy reported Delores Chiechi on behalf of the Recreational Gaming Association submitted the petition. The rule currently exempts banks and credit unions that are regulated by the Department of Financial Institutions (DFI) or any federally regulated commercial lending institution from legislature by the Commission. The proposal requests that mortgage companies no longer be required to obtain a service supplier license because mortgage companies are licensed by the DFI and should not have to obtain a license in order to loan funds to licensees. It also requests that licensed certified public accountants providing gambling related services not have to hold an additional service supplier license. Staff recommends filing the rule for further discussion and she reported staff would be prepared to provide a recommendation at the next Commission meeting. **Chair Niemi** called for questions or comments, and there were none.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to file WAC 230-02-205 for further discussion. *Vote taken; the motion passed unanimously.*

20. Petition for Rule Change – Recreational Gaming Association, Prize Payouts:

WAC 230-40-610:

Ms. Cass-Healy reported that Delores Chiechi also submitted this petition on behalf of the Recreational Gaming Association. This rule proposal requests that operating restrictions for Poker games offering player supported jackpots be increased for cash payouts from \$500 to \$2,500. Card rooms would be allowed to payout prizes in cash up to \$2,500. Currently, \$500 may be paid in cash and the remainder paid via check. In addition, the petition requests that licensees now also be able to cash those checks on their premises. **Ms. Cass-Healy** advised that the staff is recommending filing the rule for further discussion. There were no public comments.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to file RCW 230-40-610 for further discussion. **Commissioner Ludwig** and **Chair Niemi** asked for a better explanation regarding this rule, and inquired why the RGA was interested in promoting the rule. **Chair Niemi** called for public comments.

George Teeny, representing the Recreational Gaming Association, explained that as well as Commission staff looking at the rules that needed to be streamlined and brought up to date, the RGA was also considering rules to bring the industry into the 21st century. He commented that when the \$500 cash payout was initially established, the procedures, the policies, and the accounting processes were all new and the industry as well as the Commission didn't want to put anything in jeopardy. However, over the last year since this rule was put into place, he advised there has been little to no problem, and the RGA believes that the licensees are capable of taking this up to the next level. Currently, when there is a \$500 payout, the game stops, surveillance comes in and takes pictures, and it slows

everything down. **Mr. Teeny** explained that one of the things that used to be done with the Poker jackpots was that when the jackpot built up to a particular level (\$20,000 or \$30,000) they would be split between two or three players at that table. Now, incremental payouts have been created (\$500, \$700, \$1,000, \$1,200), and the whole scope of how the jackpots are being paid out has changed. What ends up happening is that every hour and half, the game literally stops in order for the surveillance to take place and for the appropriate paper work to be completed. By raising the cash payout limit from \$500 to \$2,500—it wouldn't stop the surveillance, the appropriate paperwork would continue to be received from each of the players, and all the checks and balances remain in place. When facilitating the payouts, licensees pay \$500 dollars in cash and the balance is paid out with a check. That aggravates the players because the cash they have put in to build up these jackpots is now being given back to them in a check. They can't cash the check if they win on a weekend day, which creates an inconvenience. There may also be a check fee if the player ends up taking the check to another institution to cash, and he noted that a lot of the places do not like third party checks. Mr. Teeny affirmed this was something that worked at one time; however, times have changed, and the RGA was looking for a system that worked smoother for the industry and the players. **Chair Niemi** commented about a personal experience in Reno, where she witnessed a person receiving a very large check, and the casino actually taking fingerprints from the winner. She noted that so much has changed in gambling, even in the last six months, and she cautioned the RGA to make sure that this is what they wanted. Mr. Teeny affirmed and explained that because of the SOPs in place, the surveillance, the security camera systems, knowing the customer, and the licensee knowing their own checks, they felt very comfortable. He also noted that if the check becomes substantial enough and the house couldn't pay for it, a check would be given to the customer.

Commissioner Orr advised that he didn't disagree with what Mr. Teeny was saying; however, his concern was that staff had not had adequate time to review the request and provide a recommendation. **Chair Niemi** acknowledged the commissioners did not have a staff report on the rule proposal, and she explained the Commission would not act on the proposal until the staff has reviewed the proposal and provided their staff report and recommendation. With no further comments, Chair Niemi called for the vote, *vote taken; the motion passed unanimously.*

21. Petition for Rule Change – Ronnie Strong, Re-naming Event Pull-tabs:
WAC 230-30-033:

Ms. Cass-Healy reported the petition submitted by Ronnie Strong requests that the name event pull-tab series be changed to event Bingo ticket. She noted that staff currently does not believe the change as submitted addresses all the potential issues involved with the proposal. For example, the definitions of Bingo or pull-tabs may be affected. Industry members have been encouraged to do more resource on this issue and come back with additional language, and they have indicated their willingness to do so. Staff recommends filing the rule for further discussion. **Chair Niemi** called for public comments.

Ronnie Strong, President of the CNPV, advised that there were several clubs involved with the proposal, and he noted they also met with the WCCGA. Mr. Strong affirmed the CNPV

would put a group together to work with the Rules Team. He asked the Commission to file the rule for discussion. There were no further comments.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to file WAC 230-30-033 for further discussion, with a note that there were some staff and Commissioner concerns. *Vote taken; the motion passed unanimously.*

22. Other Business/General Discussion/Comments from the Public:

Chair Niemi called for other business or discussion/comments from the public. She reminded the public that the Commission would be commencing a rules simplification project and she encouraged the licensees to be thinking about this project and to be prepared to offer ideas.

Don Kauffman addressed the report presented by Sally Perkins regarding charitable gaming in the state, and he commented that he thought the report had a lot of good information in it. However, while the charitable nonprofit organizations appreciated the effort put forward, he advised they were also a little concerned that there might be some inaccuracies in the report. He advised that he was looking forward to the regional meetings to create some dialogue with the staff. He hoped that if inaccuracies or recommendations are identified that may not be appropriate for Commission action, that an addendum be attached to the report to clarify those issues. **Chair Niemi** suggested that Mr. Kauffman as well as other licensees should submit their comments in writing so they could be discussed at the regional meetings that would be scheduled.

Delores Chiechi, Executive Director, Recreational Gaming Association, commented that she wanted to acknowledge the fact that the Commission staff has already been working with the RGA on the rules streamlining procedure. She advised the RGA appreciated being involved in that process.

With no further comments, **Chair Niemi** adjourned the meeting at 10:45 a.m.

Minutes submitted by:

Shirley Corbett
Executive Assistant